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)Charge No: 1997CF0248
)EEOC No: 21B962981
)ALS No: 9911
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1. Complainant's chief counsel, Carey Stein, is a partner at Ashman & Stein (firm).
2. Mr. Stein has 27 years of legal experience including employment discrimination litigation and Title VII cases.
3. Employment litigation comprises nearly all of Mr. Stein's current practice as well as a substantial portion of the firm's practice.
4. Mr. Stein requests \$215.00 per hour for work performed from May, 1997 through December 31, 1999, and \$295.00 per hour for work performed subsequent to then.
5. Mr. Stein's request for an hourly fee of \$295.00 for work performed from July 18, 2000 until September 27, 2001 is excessive and not reasonable.
6. \$215.00 per hour is a more reasonable rate for all of the work performed by Mr. Stein on this case.
7. Attorney Judi Kahn is a former associate at the firm.
8. Ms. Kahn has eight years of experience and devoted substantially all of her time at the firm to employment-related matters.
9. Ms. Kahn's hourly rate of \$165.00 is reasonable.

10. This case presented no novel legal theories, nor unique or particularly difficult legal issues.
11. Complainant requests \$2,045.22 in costs, including copying, service fees, postage and electronic research.
12. The service fees are not being awarded as they were unnecessary.
13. The remaining costs are not being awarded because they are costs incurred as normal business overhead and there is no evidence that these costs are routinely billed to the client.
14. Some of the hours requested for work performed by Attorney Stein are either excessive or redundant; therefore, the hours should be reduced to 157.50.
15. Some of the hours requested for work performed by Attorney Kahn are either excessive or redundant; therefore the hours should be reduced to 71.80.
16. Attorney Stein should be compensated for 157.5 hours of work performed at the rate of \$215.00 per hour or \$33,862.50.
17. Attorney Kahn should be compensated for 71.8 hours of work performed at the rate of \$165.00 per hour or \$11,847.00.
18. An award of a fee multiplier is not justified nor supported by documentation.

CONCLUSIONS OF LAW

1. The award of a fee multiplier is not justified and is inappropriate in this case.
2. The requested hourly rate of \$295.00 for some of the work performed by Attorney Stein is not supported and should be reduced to \$215.00 per hour.
3. The requested hourly rate of \$165.00 for Attorney Kahn is reasonable.
4. Some of the hours requested for work performed by Attorney Stein are either excessive or redundant; therefore, the hours should be reduced to 157.50.
5. Some of the hours requested for work performed by Attorney Kahn are either excessive or redundant; therefore the hours should be reduced to 71.80.
6. The requested amount for costs of postage, copying and electronic research are not allowed because these are considered normal business overhead and there is no support that these costs are routinely billed to the client.
7. The requested amount for service fees are not allowed because they were unnecessary.

DETERMINATION

Complainant should be awarded \$33,862.50 for reasonable attorney's fees related to work performed by Attorney Stein; and \$11,847.00 for reasonable attorney's fees for work performed by Attorney Kahn. Complainant should not be awarded any amount for costs.

DISCUSSION

Request for Multiplier

Complainant requests a multiplier of 1.5 arguing that it is justified because it was necessary to impeach most, if not all, of Respondent's witnesses to get at the truth of

matters asserted at hearing. Complainant contends that Respondent never made a settlement offer of any kind and unsuccessfully moved for summary judgment and a directed finding at the close of Complainant's case. Complainant further argues that Respondent's conduct in stonewalling discovery, introducing numerous false affidavits, filing a frivolous motion in limine, and filing a last minute frivolous motion to change venue resulted in increasing the hours necessary to litigate this action and further resulted in lost opportunities and preclusion of employment for Complainant's counsel.

Respondent argues that Complainant's request for a multiplier is legally frivolous as an award of a multiplier is justified only pursuant to extraordinary circumstances or where exceptional success is achieved. Respondent contends that these circumstances do not exist here and they similarly did not exist when Complainant's counsel was denied a multiplier in *Hyland v. Indicator Lites, Inc.*, 1995 CF 2551, 1998 WL 603562 (July 24, 1998). Respondent further argues for a reduction of Complainant's requested fees, contending that Complainant is not entitled to fees relating to issues which Complainant lost, including the issue of damages and the issue regarding Complainant's having threatened a co-worker.

Complainant's argument in support of a multiplier is based upon her contention that Respondent stonewalled discovery, filed frivolous motions and introduced false affidavits. I find that, notwithstanding whether Complainant's allegations as to Respondent's conduct are valid, these are not bases for suggesting a multiplier. The Commission has held that multipliers are not favored and should be reserved for cases which address unique, novel and particularly difficult issues, *Kolar and Sangamon County*, 29 Ill. HRC Rep. 334 (1986). There is nothing present in this litigation which meets that standard. Complainant contends that she was forced to impeach several of Respondent's witnesses as to their affidavits. This contention is unpersuasive. This case presented numerous issues of credibility, as most employment discrimination cases do. Rarely do actors of racially motivated conduct in employment readily admit to these acts nor are these acts commonly performed in an overt manner; therefore, impeachment is an inherent and common legal maneuver in this venue. Additionally, Complainant concedes in her fee petition that the issues involved in this case were not particularly unusual and the record supports this characterization. Because the litigation involved no novel legal theories or unique, particularly difficult issues, the application of a multiplier is not supported.

Appropriate Hourly Rate

When considering a fee petition, it is first necessary to establish a reasonable hourly rate. An appropriate hourly rate is generally dependent upon the actual hourly rate the attorney charges, the experience of the attorney, and previous awards of attorney's fees to counsel. *Clark and Champaign National Bank*, 4 Ill.HRC Rep. 193 (1982).

Attorney Carey M. Stein, a partner in the law firm of Ashman & Stein, is the counsel of record. Mr. Stein has 27 years of experience including employment discrimination litigation and Title VII cases. Employment litigation comprises nearly all of his current practice as well as a substantial portion of the firm's practice. Stein's affidavit indicates

that his customary fee is \$295.00 per hour. Prior to January 1, 2000, it was \$215.00 per hour. The affidavit states that he has a busy practice and would have spent more time on other lucrative matters had not the Respondent engaged in stonewalling discovery, introducing false affidavits and other frivolous filings. The affidavit states that the customary fee is based on actual court awards, contingent fee recoveries and hourly rates charged to the firm's other clients.

Complainant also requests fees for Attorney Judi Kahn, a former associate at the firm. Ms. Kahn's hourly rate is \$165.00. Ms. Kahn had eight years of experience and devoted substantially all of her time at the firm to employment-related matters.

Complainant submits separate affidavits of Attorneys Keith L. Hunt, Arnold Briskman, and Raymond M. Sophie. Mr. Hunt states that his experience of 15 years as a trial lawyer supports that the hourly rate of seasoned practitioners in employment law ranges from \$225.00 to \$300.00 per hour. Mr. Briskman, who has 26 years of legal experience, states that he regularly receives attorney awards in excess of \$200.00 per hour for workers' compensation claims before the Illinois Industrial Commission. Mr. Sophie, who has practiced 20 years, and whose current practice is devoted to civil, labor and employment litigation, regularly bills between \$195.00 and \$220.00 per hour for employment related matters.

Complainant submits absolutely no support for the \$295.00 per hour fee requested for services performed from July 2000 until September 27, 2001. Complainant cites no cases in which he has been awarded a fee of \$295.00 per hour. The *Hyland* case, cited by Respondent, awarded Complainant's counsel, Mr. Stein, \$160.00 an hour for a case the Administrative Law Judge in *Hyland* characterized as "neither novel nor complex and which met with limited success." Given that the *Hyland* case was a 1998 decision in which the Complainant was much less successful than here, and in light of Complainant's submitted documentation, \$215.00 is an appropriate hourly rate.

Appropriate Number of Hours Expended

Once the hourly rate is decided upon, the next step is to determine whether the hours claimed are justified. Complainant file an itemized list of work performed by the attorneys, including dates and time devoted to each activity and its cost. The fee petition is in accordance with Sec 5300.765 (a)(1) and is sufficient to allow the Respondent to scrutinize it.

Respondent has submitted a detailed chart itemizing the time allocations it takes issue with. Respondent's objections vary and include arguing that Complainant spent excessive time performing specific tasks, that the work performed was insufficiently detailed, that the work performed was redundant and that Complainant's counsel should not be compensated for hearing time on unsuccessful motions.

As the burden is on Complainant to justify the amount of hours requested, I have carefully reviewed the fee petition and find that some of the hours requested are not justified by the documentation submitted.

Carey M. Stein

Complainant requests that she be compensated for 176.5 hours of work performed by Attorney Stein. I am reducing the time requested by 19 hours due to the following reasons:

Date	Explanation	Amount of Reduction (hours)
6-11-97	excessive time for HRC conference	.50
11-24-97	evidence of misstatement of fact	1.75
11-25-97	partially clerical function	1.25
7-27-00	excessive time	.75
4-21-00	excessive time	2.50
10-30-00	lost motion	2.00
10-30-00	Motion to reconsider (lost)	2.25
11-02-00	Hearing approx. 7 hours	2.00
11-03-00	Hearing approx. 7 hours	2.00
11-06-00	excessive time	4.00

19.00

Attorney Stein should be compensated for 157.5 hours of work performed at the rate of \$215.00 per hour or \$33,862.50.

Judi Kahn

Complainant requests that she be compensated for 91.30 hours for work performed by Attorney Kahn. I am reducing the time requested by 19.5 hours for the following reasons:

Date	Explanation	Amount of Reduction (hours)
1-2-98	excessive time	2.00
2-6-98	excessive time	1.20
2-6-98	essentially clerical duties	.90
2-18-98	excessive time to leave a mesa	.60
3-06-98	essentially clerical duties	.50
3-10-98	essentially clerical duties	.60
3-10-99	essentially clerical duties	1.10
3-10-00	essentially clerical duties	.20
7-01-98	excessive time	3.30
7-02-98	excessive time	3.10
7-22-98	redundant	6.00

19.5

Attorney Kahn should be compensated for 71.8 hours of work performed at the rate of \$165.00 per hour or \$11,847.00.

Request for Costs

Complainant requests \$2,045.22 in costs, including \$581.90 for copying, \$1,278.50 in service fees, \$413.26 in postage and \$171.56 in electronic research. The Commission has routinely denied reimbursement for copying and other routine costs where a fee petition does not show that counsel routinely bills those expenses to his client. *Steele and B.F. Goodrich Co.*, 26 Ill. HRC Rep. 151 (1986); *Kauling-Schoen and Silhouette American Health Spas*, __ Ill. HRC Rep. __ (1986 SF 0177, February 8, 1993). The rationale for this denial is that such expenses are considered part of business overhead, which presumably is reflected in counsel's hourly rate. Complainant's counsel's affidavit does not support that these costs are routinely billed to his clients; therefore, I am denying the request for \$581.90 for copying, \$413.26 for postage, and \$171.56 in electronic research.

As to the service fees, Respondent argues that service fees associated with seven current or former employees of Respondent were unnecessary as these witnesses would have been produced with simple notice, rather than formal service; therefore, I am denying the request for \$1,278.50 in service fees.

RECOMMENDATION

Based on the foregoing, it is recommended that the Commission order that:

- A. Respondent cease and desist from further discrimination on the basis of race;
- B. Respondent pay \$33,862.50 for attorney's fees for services of Attorney Stein;
- C. Respondent pay \$11,847.00 for attorney's fees for services of Attorney Kahn;
- D. Complainant receive all other relief recommended in the RLD entered September 10, 2001.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: December 21, 2001